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Luce Forward

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MAR 05 2008

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

ATTORNEYS AT LAW · FOUNDED 1873

DEL MAR GATEWAY, 11988 EL CAMINO REAL, SUITE 200 · SAN DIEGO, CALIFORNIA 92130-2594

TELEPHONE 858.720.6300 • FACSIMILE 858.720.6306

FACSIMILE DOCUMENT

DATE: March 5, 2008  
TO: SPRE Henry Yuen  
FIRM: USPTO  
CITY, STATE: Alexandria, VA  
FAX TELEPHONE NO.: 571-273-4856  
CONFIRMING NO.: \_\_\_\_\_  
FROM: Jason Berry  
DIRECT DIAL: 858.720.6369 DIRECT FAX: 858.523.4313  
USER/CLIENT/MATTER: 20018 / 35130-1050  
TRANSMITTING: 13 PAGES (including cover page)  
ADDITIONAL COMMENTS OR INSTRUCTIONS:

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BETWEEN THE HOURS OF 8:00 a.m. AND 6:00 p.m.

TIME/DATE TRANSMITTED BY OPERATOR: March 5, 2008 at

(TO BE COMPLETED BY SENDER)

ATTORNEY: Jason Berry

20018 / 35130-1050

(USER/CLIENT/MATTER NUMBER)

(TO BE COMPLETED BY OPERATOR)

TIME: \_\_\_\_\_

DATE: March 5, 2008

OPERATOR: \_\_\_\_\_

FAX TELEPHONE NO.: 571-273-4856

CONFIRMING NUMBER: \_\_\_\_\_

RECIPIENT'S NAME: SPRE Henry Yuen

PAGES TRANSMITTED: 13

MAR 05 2008

NVS-1050 (31530-01050)

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Michael HOGENDIJK  
Application No. : 10/772,840 Confirmation No.: 6012  
Filed : February 4, 2004  
For : RIBBON-TYPE VASCULAR PROSTHESIS HAVING STRESS-  
RELIEVING ARTICULATION AND METHODS OF USE  
Group Art Unit : 3773  
Examiner : Vy Q. Bui

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

## PETITION BASED ON FAILURE TO RECEIVE OFFICE ACTION

Dear Sir:

Applicant hereby petitions the Commissioner to resend the Office Action dated October 18, 2007 in the above-identified patent application and to reset the time period in which to respond.

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**CERTIFICATE OF MAILING/TRANSMISSION**

I hereby certify that on the date indicated below, this correspondence and anything being referred to as enclosed herein is being:  
☐ deposited with the United States Postal Service via first class mail with sufficient postage in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450; or ☐ transmitted via facsimile to the United States Patent and Trademark Office, facsimile number: ( ) - ; or ☒ transmitted via the United States Patent and Trademark Office electronic filing system.

Date: March 5, 2008

Signature: 

Name: Jason Berry

S/N 10/772,840  
Petition to Revive

After a thorough search of the docket record and file jacket, we hereby attest that the Office Action was never received.

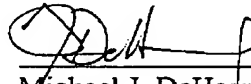
In support of the petition, Declarations by Mr. Michael DeHaemer and Ms. Janelle Humphrey are submitted describing events surrounding the discovery of the missing Office Action.

Accordingly, it is respectfully requested that the outstanding Office Action be reissued and the time to respond be reset.

Applicants believe there are no fees due at this time. In the event a fee applies to this matter, please charge our Deposit Account No. 50-2298, in the name of Luce, Forward, Hamilton & Scripps LLP.

Dated: March 5, 2008

Respectfully submitted,



Michael J. DeHaemer, Jr.  
Reg. No. 39,164  
Attorney for Applicants

LUCE, FORWARD,  
HAMILTON & SCRIPPS, LLP  
11988 El Camino Real, Suite 200  
San Diego, California 92130  
Tel: (858) 720-6300  
Fax: (858) 720-6306

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**MAR 05 2008**

Atty. Docket No. 31530-1050

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|                            |   |                   |          |
|----------------------------|---|-------------------|----------|
| In re Application of:      | ) | Group Art Unit:   | 3773     |
| Michael HOGENDIJK          | ) |                   |          |
|                            | ) | Examiner:         | Vy Q BUI |
| Serial No.: 10/772,840     | ) |                   |          |
|                            | ) | Confirmation No.: | 6012     |
| Filed: February 4, 2004    | ) |                   |          |
|                            | ) |                   |          |
| For: RIBBON-TYPE VASCULAR  | ) |                   |          |
| PROSTHESIS HAVING STRESS-  | ) |                   |          |
| RELIEVING ARTICULATION AND | ) |                   |          |
| METHODS OF USE             | ) |                   |          |

San Diego, California

Mail Stop: Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**DECLARATION**

I, Janelle Humphrey, declare:

1. I work in the capacity of a Patent Prosecution Paralegal with Luce, Forward, Hamilton & Scripps, LLP, with a business address of 11988 El Camino Real, Suite 200, San Diego, California 92130. My home address is 6346 Osler Street, San Diego, California 92111.
2. I make this declaration in support of the accompanying petition in the above-identified patent application for revival due to failure to reply to an Office Action dated October 18, 2007.
3. On February 22, 2008, Mr. DeHaemer, an attorney at the firm, gave me a chart generated using data from, private PAIR website identifying all applications which have had a status change within the prior six months.
4. On February 22, 2008, by comparing the chart identified above to our docketing system, I discovered that an Office Action was mailed on October 18, 2007, for United States Patent Application No. 10/772,840 (our reference 31530-1050), but there was no record of the Office Action in the docket system.
5. The mail, when it arrives at Luce Forward, is opened, date stamped, and entered into our back-up docketing system by our department head legal secretary. These documents are then hand delivered to me for entry into our primary docket system. I have examined both

docketing systems and neither docketing system has an entry for an Office Action mailed October 18, 2007, for United States Patent Application No. 10/772,840.

6. Enclosed with this Declaration please find, as Exhibit 1, a Due Date report from the docket system of all items due during two weeks surrounding the January 18, 2008, due date of the non-received Office Action. This report is included to indicate that mail is docketed on a consistent and timely basis. Although the report has an entry for the non-received Office Action, the Office Action was not entered into the docket system until February 22, 2008. To protect client and application confidentiality, client names and other confidential information on the Due Date report have been redacted.

7. Also enclosed, Exhibit 2, is a copy of an Actions Due page of the docket record concerning the non-received Office Action. As indicated in the "Date Created" field, the entry for the Office Action was entered into the docket system on February 22, 2008, the date which I discovered the missing Office Action.

8. Finally, enclosed is a copy of the Remarks section, Exhibit 3, of the docket record for the present case. There are no entries between the mailing date of the non-received Office Action (October 18, 2007) and the date I discovered the Office Action.

9. The delay in filing the required reply to the Office Action prior to the due date was unavoidable. Luce Forward uses great care and diligence in maintaining our docket systems. We exercise this care and rely upon the ordinary and trustworthy agency of the United States Postal Service as an instrumentality to conduct the important function of delivering correspondence from the United States Patent and Trademark Office.

10. I hereby declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of title 18 of the United States Code and that such willful statements may jeopardize the validity of the application or any patent issued thereon.

Signature: \_\_\_\_\_

Name: Janelle Humphrey

Date: March 5, 2008

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Page: i

14-Jan-2008 To 25-Jan-2008

**Exhibit 1**

Wednesday, March 05, 2008

Due Date List By Date

Page: 2

14-Jan-2008 To 25-Jan-2008

| Due Date                                                                                                         | Action Due                   | Case Number/SubCase        | Status    | App Number | App Date    | Atty's |
|------------------------------------------------------------------------------------------------------------------|------------------------------|----------------------------|-----------|------------|-------------|--------|
| Indicator                                                                                                        | Action Type                  | Country                    | Client    | Pat Number | Iss Date    |        |
| 18-Jan-2008                                                                                                      | 3 Month Due Date             | 31530-1050                 | Published | 10/772,840 | 04-Feb-2004 | MJD    |
| Due Date                                                                                                         | US-Final Office Action       | United States of America   |           |            |             |        |
| <i>Title: RIBBON-TYPE VASCULAR PROSTHESIS HAVING STRESS-RELIEVING ARTICULATION AND METHODS OF USE (NVS-1050)</i> |                              |                            |           |            |             |        |
| 19-Jan-2008                                                                                                      | 2 Months Unit Response Due   | 30238-444                  | Pending   | 2,509,674  | 12-Dec-2003 | MPB    |
| Reminder                                                                                                         | Foreign Office Action        | Canada                     |           |            |             |        |
| 20-Jan-2008                                                                                                      | disclosure                   | 30238-1087                 | Published | 1897-2007  | 27-Jun-2007 | MPB    |
| Due Date                                                                                                         |                              | Chile                      |           |            |             |        |
| <i>Title: MULTIPURPOSE EXERCISE SYSTEM</i>                                                                       |                              |                            |           |            |             |        |
| 20-Jan-2008                                                                                                      | DDL Year 4 MF w/surcharge    | 31981-6/P02                | Granted   | 09/228,929 | 12-Jan-1999 | MPB    |
| Due Date                                                                                                         | DDL Year 4 MF                | United States of America   |           | 6,681,398  | 20-Jan-2004 | KAC    |
| <i>Title: Systems, devices and methods for reviewing selected signal segments</i>                                |                              |                            |           |            |             |        |
| 21-Jan-2008                                                                                                      | 2 mo. / Annuity Due          | 26015-P03                  | Granted   |            |             | DEH    |
| Reminder                                                                                                         | Annuity                      | Belgium                    |           | 0746870    |             | PKH    |
| <i>Title: IRRADIATION SYSTEM UTILIZING CONVEYOR-TRANSPORTED ARTICLE CARRIERS</i>                                 |                              |                            |           |            |             |        |
| 21-Jan-2008                                                                                                      | 3 mo. / Annuity Due          | 30289-1222                 | Published | 05738690.6 | 21-Apr-2005 | MPB    |
| Reminder                                                                                                         | Annuity                      | European Patent Convention |           |            |             |        |
| <i>Title: METHOD AND APPARATUS FOR WORD OF MOUTH SELLING VIA A COMMUNICATIONS NETWORK</i>                        |                              |                            |           |            |             |        |
| 21-Jan-2008                                                                                                      | 1 Month to Final OA Due Date | 31530-1100                 | Published | 11/154,056 | 15-Jun-2005 | MJD    |
| Reminder                                                                                                         | US-Final Office Action       | United States of America   |           |            |             |        |
| <i>Title: PROSTHESIS, DELIVERY SYSTEM AND METHOD FOR NEUROVASCULAR ANEURYSM REPAIR [NVS-1100]</i>                |                              |                            |           |            |             |        |

Wednesday, March 05, 2008

Due Date List By Date

14-Jan-2008 To 25-Jan-2008

Page: 3

| Due Date                                                                                                                | Action Due                  | Case Number/SubCase      | Status    | App Number   | App Date    | Atty |
|-------------------------------------------------------------------------------------------------------------------------|-----------------------------|--------------------------|-----------|--------------|-------------|------|
| Indicator                                                                                                               | Action Type                 | Country                  | Client    | Pat Number   | Iss Date    |      |
| 23-Jan-2008                                                                                                             | 3 mo to non-prov/FF DDL     | 34306-2/P03              | Pending   | 60/926,054   | 23-Apr-2007 | PKH  |
| Due Date                                                                                                                | 1 mo to non-prov/FF DDL     | United States of America |           |              |             | MJM  |
| 24-Jan-2008                                                                                                             | 1st Extension Final OA Due  | 30289-1240               | Published | 11/044,544   | 26-Jan-2005 | MPB  |
| Due Date                                                                                                                | US-Final Office Action      | United States of America |           |              |             |      |
| <i>Title: METHOD AND APPARATUS FOR CONSTRUCTING A NETWORKING DATABASE AND SYSTEM PROACTIVELY</i>                        |                             |                          |           |              |             |      |
| 24-Jan-2008                                                                                                             | 3 Months Until Response Due | 31188-1063               | Published | 200262035    | 07-Mar-2002 | MJD  |
| Reminder                                                                                                                | Foreign Office Action       | Japan                    |           |              |             |      |
| <i>Title: SYSTEMS AND METHODS FOR CONDUCTING ELECTRONIC COMMERCE TRANSACTIONS REQUIRING MICROPAYMENT [GTX-001 CIP3]</i> |                             |                          |           |              |             |      |
| 25-Jan-2008                                                                                                             | 3 Months Until Response Due | 30238-10617              | Pending   | IAP 20070167 | 29-Sep-2005 | MPB  |
| Reminder                                                                                                                | Foreign Office Action       | Uzbekistan               |           |              |             |      |



**Actions Due**

Wednesday, March 05, 2008

Page: 1

Case Number: 31530-1050

SubCase:

Country: US United States of America

Case Type: CIP

Status: Published

Filing Date: 04-Feb-2004

Action Type: US-Final Office Action

Base Date: 18-Oct-2007

Application #: 10/772,840

Response sent date:

| Action(s) Due            | Due Date    | Indicator | Taken |
|--------------------------|-------------|-----------|-------|
| 1 Month to Due Date      | 18-Dec-2007 | Reminder  |       |
| 3 Month Due Date         | 18-Jan-2008 | Due Date  |       |
| 1st Extension f/Final OA | 18-Feb-2008 | Due Date  |       |
| 2nd Extension f/Final OA | 18-Mar-2008 | Due Date  |       |
| 6 Month Final OA Date    | 18-Apr-2008 | Final     |       |

User ID: jhumphrey

Date Created: 22-Feb-2008

Last Update: 22-Feb-2008

Exhibit 2

MAR 06 2008

**Country Application**

Wednesday, March 05, 2008

Page: 1

|                                                                               |                               |          |
|-------------------------------------------------------------------------------|-------------------------------|----------|
| Case Number: 31530-1050                                                       | Country: US                   | SubCase: |
| Invention Title: RIBBON-TYPE VASCULAR PROSTHESIS HAVING STRESS-RELIEVING ARTI |                               |          |
| Client: NovoStent Corporation                                                 | United States of America      |          |
| Case Type: CIP                                                                | Application Status: Published |          |
| Application Number: 10/772,840                                                | Filing Date: 04-Feb-2004      |          |
| Publication Number: 2004-0158314                                              | Publication Date: 12-Aug-2004 |          |
| Patent Number:                                                                | Issue Date:                   |          |
| Parent/PCT Number: 10/342,427                                                 | Parent/PCT Date: 13-Jan-2003  |          |
| Parent Issue Number:                                                          | Parent Issue Date:            |          |
| Tax Schedule: LE                                                              | Expiration Date:              |          |
| Confirmation #: 6012                                                          | Patent Term Adjustment: 0     |          |
| Agent:                                                                        | Agent Reference #:            |          |

**Family Reference:**

**Remarks:** This application is a CIP of 10/342,427 filed 01-13-2003 (31530-1010) which claims priority to 60/436,516 filed 12-24-2002

05-11-2004: Received filing receipt. Reported to client.  
05-25-2004: Five (5) sheets of formal drawings filed.  
04-15-2005: Supplemental IDS w/42 cited references.  
03-28-2007: Received Office Action w/ mailing date of March 26, 2007.  
06-15-2007: Reviewed ISR for co-pending PCT, no IDS needed, reference previously cited.  
06-21-2007: Email to client enclosing draft response to OA.  
06-25-2007: Email from client approving our draft response and instructed us to proceed with the filing of the Response to OA.  
06-26-2007: Response to OA e-filed with the USPTO.  
2-22-2008: received OA from USPTO dated 10-18-2007. Due 01-18-2008 DDL 04-18-2008. This application was lost in the mail, but was found when looking through PAIR.  
03-03-2008: Filed a Rqst for the OA to be remailed and the clock to be restarted.

Exhibit 3

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## Country Application

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Wednesday, March 05, 2008

Page: 2

User ID: jberry

Date Created: 10-Feb-2004

Last Update: 03-Mar-2008

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Atty. Docket No. 31530-1050

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|                            |   |                   |          |
|----------------------------|---|-------------------|----------|
| In re Application of:      | ) | Group Art Unit:   | 3773     |
| Michael HOGENDIJK          | ) |                   |          |
|                            | ) | Examiner:         | Vy Q BUI |
| Serial No.: 10/772,840     | ) |                   |          |
|                            | ) | Confirmation No.: | 6012     |
| Filed: February 4, 2004    | ) |                   |          |
|                            | ) |                   |          |
| For: RIBBON-TYPE VASCULAR  | ) |                   |          |
| PROSTHESIS HAVING STRESS-  | ) |                   |          |
| RELIEVING ARTICULATION AND | ) |                   |          |
| METHODS OF USE             | ) |                   |          |

San Diego, California

Mail Stop: Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

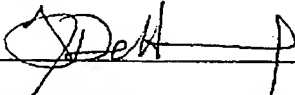
**DECLARATION**

I, Michael J. DeHaemer, Jr., declare:

1. I am an Associate Attorney at Luce, Forward, Hamilton & Scripps, LLP, and am registered to practice before the USPTO. I have a business address of 11988 El Camino Real, Suite 200, San Diego, California 92130. My home address is 11134 Tampere Ct., San Diego, CA 92131.
2. I make this declaration in support of a petition submitted in the above-identified patent application for non-receipt of a Final Office Action dated October 18, 2007.
3. On or about February 22, 2008, I accessed private PAIR and downloaded the XML file identifying applications which have had a status change within the prior six months. Using a simple script, I extracted the data from the XML file and created a chart showing the recent changes. I gave the chart to Janelle Humphrey to check against our docket system.
4. Ms. Humphrey later notified me that the data from private PAIR showed that a Final Office Action had been mailed in the above-identified application, but that there was no record of the Office Action in the file or docket system. A check of our secondary docket system confirmed that we had never received the Office Action.

5. After consulting the MPEP, the USPTO Inventor's Assistance Center, and Henry Yuen (TC-3700 SPRE), I filed the accompanying petition requesting that the Office Action be re-mailed and that the time to respond to be reset.

6. I hereby declare that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of title 18 of the United States Code and that such willful statements may jeopardize the validity of the application or any patent issued thereon.

Signature: 

Name: M J DeHaemer, Jr., Reg. No. 39.164

Date: March 5, 2008

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